

S.B. CIVIL WRIT PETITION NO.5193/2006

Jaswant.

VS.

Addl. District Judge (FT), Anoopgarh and anr.

Date : 23.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SL Jain, for petitioner.

Mr.H Choudhary, for the respondent.

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Heard learned counsel for the parties.

The petitioner/plaintiff is aggrieved against the order dated 19.8.2006 by which the trial court rejected the petitioner's application filed under Order 16 Rule 1(3) CPC read with Section 151 CPC. By this application, the petitioner sought Court's assistance for summoning of witness, namely, Sub-Registrar, Dehra (H.P.) along with the record of registration of power of attorney dated 22.5.1973.

The trial court rejected the petitioner's application on the ground that it was the burden of the petitioner to prove the power of attorney dated 22.5.1973 and in the rebuttal issue, which

was framed on the plea taken by the defendant/respondent, the petitioner cannot prove the document – power of attorney dated 22.5.1973.

Learned counsel for the petitioner submitted that the petitioner gave his statement and produced the witnesses to prove the issues, burden of which was upon the petitioner. The petitioner closed his evidence after reserving his right to produce the evidence in rebuttal. Therefore, the petitioner has right to lead evidence in rebuttal and the trial court allowed the petitioner this right but illegally refused to summon his witness namely, Sub-Registrar, Dehra who registered the power of attorney.

Learned counsel for the petitioner relied upon a judgment of this Court (by me) delivered in the case of L.M.P. Precession Engineering Company (P) Ltd. vs. Ram Narayan reported in 2004(1) DNJ (Raj.) 420. In this case, this Court held that the plaintiff led evidence only on issues, burden of which was upon the plaintiff and the plaintiff while closing his evidence, kept right of rebuttal reserved in presence of counsel of defendant, which was never objected by the defendant, then the trial court rightly held that the plaintiff has right to lead evidence in rebuttal. According

to learned counsel for the petitioner, in view of the facts, in the case in hand, when the right of rebuttal was kept reserved by the plaintiff, the trial court should have allowed the production of evidence of the plaintiff in rebuttal by summoning witness and by exhibiting the document.

I considered the submissions of learned counsel for the petitioner and perused the reasons given by the trial court as well as the record, which was summoned from the trial court.

It appears that the petitioner/plaintiff filed suit for specific performance of contract and specifically relied upon one power of attorney dated 22.5.1973. The issue no.1 framed by the trial court is to the effect whether the plaintiff entered into agreement for purchase of the suit property through power of attorney Shri Tribhuvan Singh and obtained possession of the suit property. To prove this issue, the plaintiff led evidence, obviously to prove the fact that Tribhuvan Singh was power of attorney and the plaintiff entered into agreement for purchase of the land. The burden to prove the power of attorney executed in favour of Tribhuvan Singh was upon the plaintiff. Therefore, the plaintiff, if

has not led any evidence to prove the power of attorney even when the burden was upon him to prove the issue no.1, then the plaintiff in rebuttal to the issue which was framed on the basis of plea of defendant, cannot be permitted to prove that issue.

The issue no.3 is an issue which is to the effect that whether the power of attorney or agreement are forged and fabricated. Before proving the power of attorney and agreement forged and fabricated by the defendant, the plaintiff was required to put on record the power of attorney and exhibit it and he should have proved the power of attorney and agreement. Therefore, the evidence sought to be produced could have been produced by the plaintiff only prior to leading of evidence by the defendant on the plea taken by the defendant about the document being forged and fabricated. In view of the above reason, the evidence which is sought to be produced by the plaintiff for proving the power of attorney and exhibiting it or by summoning the witness, could not have been permitted.

The judgment of this Court delivered in the case of Ram Narayan (supra) also is to the effect that when the plaintiff while closing the evidence, kept right of rebuttal reserved his

right to produce evidence in rebuttal, then the plaintiff could have led evidence in rebuttal. The plaintiff in that case led evidence only on the issue, burden of which was upon the plaintiff.

In view of the above, this writ petition having no force, is hereby dismissed.

The record be sent back forthwith to the trial court.

(PRAKASH TATIA), J.

S.Phophaliya